

Appln No. 10/723,817
Amdt date October 25, 2007
Reply to Office action of July 27, 2007

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Claims 1-20, 24 and 25 are now in the application. Claims 9, 10 and 18 have been amended.

The Examiner has objected to claims 9 and 10 because of informalities. Applicant has addressed the objections as suggested by the Examiner.

The Examiner has rejected claims 18, 19 and 25 under 35 U.S.C. §102(b) as being anticipated by O'Fearn. Additionally, the Examiner has rejected claim 20 under §103(a) as being obvious over O'Fearn.

The Applicant's amended claim 18 calls for, in part (underlining added for emphasis): "a cylindrical portion that protrudes from the lower end of the gate pole, the cylindrical portion terminating at a substantially flat bottom surface."

O'Fearn teaches a stake telescoped within a hollow pole, the stake cut on one end at such an angle as to provide a sharp point for ease of insertion into the sand. As discussed with the Examiner in a telephonic interview, O'Fearn does not teach a cylindrical portion terminating at a substantially flat bottom surface.

Accordingly, the Applicant submits that claim 18 is not anticipated by O'Fearn under 35 U.S.C. §102(b).

Claims 19, 20 and 25 are dependent on claim 18. As such, these claims are believed allowable based on claim 18 for at least the reasons above and for the additional limitations that they contain.

The Examiner has rejected claims 18-20 under 35 U.S.C. §102(a) as being anticipated by Applicant's Prior Art (APA).

Applicant's claim 18 calls for, in part (underlining added for emphasis): "A gate pole comprising: a lower end; an insert that is received within the lower end of the gate pole; and a pin that fixedly attached to the insert, the pin having . . . a cylindrical portion that protrudes from the lower end of the gate pole."

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The Examiner notes that APA discloses a pole capable of use with a gate. The Applicant respectfully traverses the Examiner's argument. APA specifically states "[s]uch [smaller diameter] pins have not been used at the gate structure for pool fences because of a perceived need to provide a more stable, rigid structure at and near the gate." *Page 1, 33-35*. APA further recites "[a]s noted above, poles with smaller diameter pins have not been used at and near gate structures because of stability concerns." Accordingly, APA does not teach a gate pole comprising: a lower end; an insert that is received within the lower end of the gate pole; and a pin that fixedly attached to the insert, the pin having a cylindrical portion that protrudes from the lower end of the gate pole. Rather, APA teaches that such pins have not been used with gate poles. Accordingly, the Applicant submits that claim 18 is not anticipated by APA under 35 U.S.C. §102(b).

Claims 19 and 20 are dependent on claim 18. As such, these claims are believed allowable based on claim 18 for at least the reasons above and for the additional limitations they contain.

The Examiner has rejected claims 1-8, 10-12, and 14-20, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Sadinsky in view of APA. The Examiner, however, does not provide reasons for rejecting claims 18-20 over Sadinsky in view of APA.

The Applicant's claim 1 calls for, in part, (underlining added for emphasis): "[a] lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles, the poles including an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole . . . a gate in the fence including a frame having a pair of spaced upright support members . . . support means capable of withstanding lateral tension forces of the screen for supporting and latching the gate, the support means comprising at least a first pole on one side of the gate and a second pole on another side of the gate . . . wherein the pins are adapted to be inserted into the pool deck adjacent to the pool."

The Applicant's claim 10 recites substantially similar limitations as claim 1. Further claim 14 recites, in part (emphasis added): "[a] method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles . . . comprising:

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inserting the pins protruding from the plurality of poles into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension . . . the first and last poles of the series of pole defining a gate opening; the first and last poles each constituting a pair of gate poles interconnected to each other to define support structure capable of absorbing the tension of the flexible mesh fencing; fabricating a gate including a pair of side rails, a cross rail and flexible mesh tensioned between the side rails"

Sadinsky is directed to a tensioned protective fence with a gate. Sadinsky found that in order to open a gate in a conventional fence, an adult must draw the poles P1, P2 together sufficiently to relax the load on the hook closure and release it, and then, in opposition to the pool fence tension, draw the pool pole out of its socket in the pool decking. Sadinsky notes that individuals with limited strength have difficulty with those two steps. Accordingly, Sadinsky teaches a pair of poles on each side of the gate, each pair interconnected by respective cross-members, forming a vertical truss. When, as shown in FIG. 3, the poles themselves 20, 22 and 21, 23 are inserted into the pool decking PD, the dual poles isolate the gate from fence tension. *Para. 3:31-48 (emphasis added)*. Sadinsky notes that such multiple poles forming the rigid truss have "hardly any additional size than the single pole." *Col 1:67-Col. 2:1 (emphasis added)*.

The Examiner contends that it would have been obvious to modify the fence and gate as disclosed by Sadinsky wherein the poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert as taught by APA in order to enable one to use less noticeable, smaller diameter holes in the pool decking. Applicant respectfully disagrees.

As noted in APA, initially, holes were made in the pool decking that were at a diameter capable of receiving the lower end of the fence poles. This approach required holes large enough to receive the full width of a fence pole, allowing the poles forming the truss adjacent the gate to isolate the gate from fence tension. As taught by APA, pins having a smaller diameter than the poles were attached to a lower end of the poles and inserted into correspondingly-sized holes in the pool deck. However, having a smaller diameter member, such as the pin, rather than a larger diameter member, such as a pole, was thought to decrease stability of the gate, and would

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therefore not provide enough isolation from fence tension to the gate. As such, as taught by APA, poles with smaller diameter pins have not been used at and near gate structures because of stability concerns. Accordingly, since it is counterintuitive to create a tension free gate by reducing the size of the member inserted into the pool deck, it would not have been obvious for one of ordinary skill in the art to make the larger pole member (as taught by Sadinsky) into a smaller pin member (as taught by APA) to provide an adequately tensioned gate.

Accordingly, the Applicant submits that there is no logical reason to combine the references as indicated by the Examiner and, therefore, claims 1, 10 and 14 are patentable over Sadinsky in view of APA.

Claims 2-8, 10, 11, and 15-17 are dependent on claims 1, 10 or 14. As such, these claims are believed allowable based on claims 1, 10 or 14.

The Examiner rejected claim 25 as being obvious over APA in view of Palamarz. The Examiner also rejected claims 9, 13, 17 and 24 as being obvious over Sadinsky in view of APA and further in view of Palamarz. As noted by the Examiner, Sadinsky in view of APA fails to disclose a fence and gate wherein the pin is attached to the insert by an adhesive.

Applicant's claims 9, 13, 17, 24, and 25 recite, in part, "where the pin is fixedly attached to the insert by an adhesive."

Referring to FIG. 3, Palamarz teaches rods 54, 56 having a smaller diameter than an outer shell 58 and held in place in channels 60, 62 by an expandable grout or other suitable adhesive, the adhesive filling portions 61, 63 of channels around the rods. The adhesive, as taught by Palamarz, both retains rods 54, 56 in channels and acts together with the rods to reinforce shell 58. Therefore, any "suitable" adhesive would have to be capable of expanding and/or capable of filling the space between the rod 54, 56 and the shell 58 to provide support between the rods and shell. Additionally, Palamarz teaches that the shell 58 in addition to the rods 54, 56 is inserted into holes 64, 66. Since APA teaches only that the pins are insertable into the deck and that support for the pins is provided by the insert (having an outer diameter nearly identical to an inner diameter of the pole and inner diameter nearly identical to an outer diameter of the pin), there is no logical reason to use an expandable adhesive to provide support. In fact, since the

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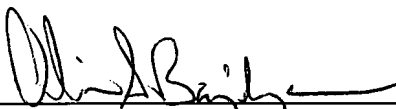
surfaces of the pole, insert and pin are in close contact, expansion of the expandable adhesive between the pin and the insert may actually reduce adhesion between the components. Accordingly, even if it were obvious to combine Sadinsky and APA, which it is not, it would not have been obvious to one of ordinary skill in the art to modify APA, teaching a pin attached to an insert attachable to a pole, and use an expandable grout or other similar adhesive as taught by Palamarz.

Additionally, as supported by Applicant's Declaration, submitted with Applicant's Response to the Office action of March 14, 2007, as well as the accompanying video, submitted directly to the Examiner herewith, the Applicant discovered that using an adhesive to attach the pin to the plastic insert, rather than being equivalent to screws, unexpectedly provided a pole with increased structural integrity. Accordingly, because of the unexpected and fruitful results obtained when using adhesive, Applicant submits that it would not have been obvious to substitute adhesive for screws on the admitted prior art poles. *See KSR, Int'l Co. v. Teleflex, Inc.*, 550 U.S. ____ (2007).

For at least the reasons noted above, Applicant submits that claims 9, 13, 17, 24 and 25 are patentable over the cited references.

In view of the above amendment and remarks, Applicant submits that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. As such, allowance of the above Application is requested.

Respectfully submitted,
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